

1 DURIE TANGRI LLP
2 MICHAEL H. PAGE—#154913
3 mpage@durietangri.com
4 RAGESH K. TANGRI—#159477
5 rtangri@durietangri.com
6 JOSEPH C. GRATZ—#240676
7 jgratz@durietangri.com
8 332 Pine Street, Suite 200
9 San Francisco, CA 94104
10 Telephone: (415) 362-6666
11 Facsimile: (415) 236-6300

12 Attorneys for Defendants
13 LINDEN RESEARCH, INC. and
14 LINDEN RESEARCH INTERNATIONAL, INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

13 EROS, LLC, a Florida Limited Liability
14 Company, and SHANNON GREI, d/b/a
15 Nomine, an individual, on behalf of
16 themselves and all others similarly situated,

17 Plaintiffs

18 vs.

19 LINDEN RESEARCH, INC., a Delaware
20 Corporation, and LINDEN RESEARCH
21 INTERNATIONAL, INC., a Delaware Corp.,

Case No. CV 09 4269 PJH
ANSWER

Trial Date: None set

Defendants

**DEFENDANTS LINDEN RESEARCH, INC. and LINDEN RESEARCH
INTERNATIONAL, INC.'s ANSWER**

3 Defendants Linden Research, Inc. (“LR”) and Linden Research International, Inc.
4 (“LRI”), (collectively “Linden”), by undersigned counsel, hereby answer the Complaint of
5 Plaintiffs Eros, LLC and Shannon Grei, individually and on behalf of all others similarly
6 situated, as follows, based on information reasonably available to Linden:

I. NATURE OF THE ACTION¹

9 1. Linden admits that LR is headquartered in San Francisco, California, and that LR
10 operates the Second Life virtual world. Linden denies the remaining allegations of this
11 Paragraph.

12 2. Linden admits that the Second Life Terms of Service limit participation outside
13 the “Teen Area” of Second Life to those who have reached the age of majority, that users of
14 Second Life are referred to as “Residents,” and that within Second Life Residents may interact or
15 engage in simulated activities of their choosing subject to the Second Life Terms of Service.
16 Linden denies the remaining allegations of this Paragraph.

17 3. Linden admits that the Second Life Terms of Service provide that Residents retain
18 certain copyright and other intellectual property rights with respect to content they create using
19 Second Life, to the extent they have any such rights under applicable law, and subject to the
20 Second Life Terms of Service. Linden lacks sufficient knowledge to admit or deny the
21 remaining allegations of this Paragraph, and on that basis denies them.

22 || 4. Denied.

23 || 5. Denied.

24 6. Linden lacks sufficient knowledge to admit or deny the allegations of this
25 Paragraph concerning Plaintiffs' motives, and on that basis denies them. Linden denies the
26 remaining allegations of this Paragraph.

²⁷ ¹ Linden neither admits nor denies the contents of the various headings and subheadings in the Complaint, which are reproduced herein solely for convenience.
²⁸

II. PARTIES

3 7. Linden lacks sufficient knowledge to admit or deny the allegations of this
4 Paragraph, and on that basis denies them.

5 8. Linden lacks sufficient knowledge to admit or deny the allegations of this
6 Paragraph, and on that basis denies them.

7 9. Linden admits that LR does business as Linden Lab, operates Second Life, is a
8 Delaware corporation headquartered in San Francisco County, California at 945 Battery Street,
9 San Francisco, California 94111, and does business in the State of California. Linden denies the
10 remaining allegations of this Paragraph.

11 10. Linden admits that there is a corporate relationship between LRI and LR, and that
12 LRI is a Delaware corporation. Linden denies the remaining allegations of this Paragraph.

III. JURISDICTION AND VENUE

15 11 Admitted

16 12. Linden admits that personal jurisdiction and venue in this Court are proper.

17 Linden denies the remaining allegations of this Paragraph.

IV. INTRADISTRICT ASSIGNMENT

20 13. This Paragraph contains no allegations to which an answer is required.

V. FACTS RELATING TO SECOND LIFE

23 14. Linden denies that all participants can “see, hear, use and modify” all simulated
24 objects. Linden admits the remaining allegations of this Paragraph.

25 15. Linden admits that within Second Life and subject to the Second Life Terms of
26 Service, Residents may exchange with each other digital content that is designed for use with
27 Second Life. Linden denies the remaining allegations of this Paragraph.

1 16. Linden is informed and believes, and on that basis admits, that various companies,
2 including those set forth in this Paragraph, have participated in Second Life.

3 17. Linden is informed and believes, and on that basis admits, that Adidas operated a
4 virtual store in Second Life, and that Adidas offered a virtual representation of its a3 Microride
5 running shoe there. Linden denies the remaining allegations of this Paragraph.

6 18. On information and belief, admitted.

7 19. Linden admits that subject to the Second Life Terms of Service, a virtual currency
8 and a virtual currency exchange are components of the Second Life virtual world service.

9 20. Linden admits that the Second Life virtual currency is called the “Linden dollar”
10 and is typically represented by the symbol “L\$”.

11 21. Linden admits the first sentence of this Paragraph. Linden denies the remaining
12 allegations of this Paragraph.

13 22. Linden admits that LR operates a Linden dollar exchange called the LindeX
14 exchange, through which Residents may exchange Linden dollars for U.S. dollars subject to the
15 Second Life Terms of Service, and that presently such an exchange has a fee of 3.5% per
16 transaction.

17 23. Linden admits that user-to-user transactions in the first quarter of 2009 totalled an
18 amount of Linden dollars that, if exchanged for U.S. dollars at then-current exchange rates,
19 would exceed \$120 million. Linden denies the remaining allegations of this Paragraph.

20 24. Linden is informed and believes, and on that basis admits, that some digital
21 content exchanged within Second Life is protected by intellectual property rights. Linden denies
22 the remaining allegations of this Paragraph.

23 25. Linden admits that LR has promoted that Second Life includes the ability to
24 exchange Linden dollars for digital content that is designed for use with Second Life, subject to
25 the Second Life Terms of Service. Linden denies the remaining allegations of this Paragraph.

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VI. SECOND LIFE: THE TECHNICAL DETAILS

26. Linden admits that the Second Life Grid includes the software and technology underlying the Second Life virtual world. Linden denies the remaining allegations of this Paragraph.

27. Linden admits that LR operates Second Life and uses servers to simulate the 3D virtual world environment and host digital content that is used with Second Life; that the term “asset” refers to data associated with digital content used with Second Life; and that an asset has an identifier called a “Universally Unique Identifier” or “UUID.” Linden denies the remaining allegations of this Paragraph.

Second Life: How Piracy Works In-World

28. Linden admits that Second Life includes a Digital Rights Management (“DRM”) system, and upon information and belief, that persons have used third-party programs to circumvent that DRM in the past. On information and belief, Linden admits that CopyBot is a third-party program that allows users to circumvent the Second Life DRM system and copy digital content that is used with Second Life without regard to the copyright or trademark status of that content. Linden admits that such use is prohibited by the Second Life Terms of Service, and denies the remaining allegations of this Paragraph.

29. Linden admits that LR may terminate the Second Life accounts of Residents who use CopyBot or other third-party programs to circumvent the Second Life DRM system and copy digital content used with Second Life. Linden admits that LR complies with all provisions of the DMCA, and denies that LR's "enforcement of intellectual property law is limited to that required" by the DMCA. Linden lacks sufficient information to admit or deny the allegations in the third sentence of this Paragraph, and on that basis denies them. Linden denies the remaining allegations of this Paragraph.

30. The first sentence of this Paragraph contains no allegations requiring an answer. Linden lacks sufficient information to admit or deny the allegations in the second sentence of this Paragraph, and on that basis denies them.

1 31. Linden lacks sufficient information to admit or deny the allegations in this
 2 Paragraph, and on that basis denies them.

3 32. Linden lacks sufficient information to admit or deny the allegations in this
 4 Paragraph, and on that basis denies them.

5 33. Linden lacks sufficient information to admit or deny the allegations of this
 6 Paragraph regarding Plaintiff Grei's experience, and on that basis denies them. Linden denies
 7 the remaining allegations of this Paragraph.

8 34. Denied.

9 35. Linden lacks sufficient information to admit or deny the allegations of this
 10 Paragraph, and on that basis denies them.

11 36. Linden admits that subject to the Second Life Terms of Service, Residents may
 12 exchange Linden dollars for digital content that is designed for use with Second Life, and that
 13 Linden dollars may be exchanged for real-world currency. Linden admits that LR operates the
 14 LindeX exchange, that the LindeX charges a 3.5% transaction fee for the exchange of Linden
 15 dollars, that LR operates the XStreetSL.com website, and that LR operates an in-world classified
 16 ads system. Linden lacks sufficient information to admit or deny the allegations in the final
 17 sentence of this Paragraph, and on that basis denies them. Linden denies the remaining
 18 allegations of this Paragraph.

19 37. Denied.

20 **Second Life Terms of Service**

21 38. Linden admits that the Second Life Terms of Service are found at
 22 <http://secondlife.com/corporate/tos.php>. Linden denies the remaining allegations of this
 23 Paragraph.

24 39. Linden admits that on August 31, 2009, the Second Life Terms of Service
 25 included the quoted language.

26 40. Denied.

27 41. Denied.

28

1 42. Denied.

2 43. Admitted as to copyrights. Linden lacks sufficient information to admit or deny
3 the allegations of this Paragraph as to trademark rights, and on that basis denies them.

4 44. Linden lacks sufficient information to admit or deny the allegations in the first
5 sentence of this Paragraph, and on that basis denies them. Linden denies the second sentence of
6 this Paragraph.

7 45. Denied.

8 46. Denied.

9 **VII. FACTS RELATING TO PLAINTIFF EROS**

10 47. Linden lacks sufficient information to admit or deny the allegations of this
11 Paragraph, and on that basis denies them.

12 48. Linden lacks sufficient information to admit or deny the allegations of this
13 Paragraph, and on that basis denies them.

14 49. Linden lacks sufficient information to admit or deny the allegations of this
15 Paragraph, and on that basis denies them.

16 50. Linden lacks sufficient information to admit or deny the allegations of this
17 Paragraph, and on that basis denies them.

18 51. Linden admits that the SexGen mark is registered with the United States Patent
19 and Trademark Office (“USPTO”) as Registration Number 3483253. Linden lacks sufficient
20 information to admit or deny the remaining allegations of this Paragraph, and on that basis denies
21 them.

22 52. Linden admits that USPTO Registration Number 3483253 includes the quoted
23 language. Linden lacks sufficient information to admit or deny the remaining allegations of this
24 Paragraph, and on that basis denies them.

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VIII. FACTS RELATING TO TRADEMARK INFRINGEMENT

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2 53. Linden lacks sufficient information to admit or deny the allegations of this
3 Paragraph, and on that basis denies them.

4 54. Linden lacks sufficient information to admit or deny the allegations of this
5 Paragraph, and on that basis denies them.

6 55. Linden lacks sufficient information to admit or deny the allegations of this
7 Paragraph, and on that basis denies them.

8 56. Linden lacks sufficient information to admit or deny the allegations of this
9 Paragraph, and on that basis denies them.

10 57. Linden admits that on or about June 17, 2008 LR inadvertently disabled some
11 content within Second Life, and that promptly thereafter LR stopped that disabling. Linden lacks
12 sufficient information to admit or deny the remaining allegations of this Paragraph, and on that
13 basis denies them.

14 58. Linden lacks sufficient information to admit or deny the allegations of this
15 Paragraph, and on that basis denies them.

16 59. Linden lacks sufficient information to admit or deny the allegations of this
17 Paragraph, and on that basis denies them.

18 60. Linden lacks sufficient information to admit or deny the allegations of this
19 Paragraph, and on that basis denies them.

20 61. Linden lacks sufficient information to admit or deny the allegations of this
21 Paragraph, and on that basis denies them.

22 62. Denied.

23 63. Linden admits that LR controls some of the technology and systems that comprise
24 the Second Life platform, that some information related to Residents' activities within Second
25 Life is stored on LR servers, that Residents may acquire virtual land within Second Life subject
26 to the Second Life Terms of Service, and that LR charges service fees. Linden lacks sufficient
27 information to admit or deny the remaining allegations of this Paragraph, and on that basis denies
28

1 them.

2 64. Denied.

3 65. Denied.

4 66. Linden admits that LR operates Second Life and the XstreetSL.com website, and
 5 that within Second Life and on XstreetSL.com, Residents may search for and exchange Linden
 6 dollars for digital content that is designed for use with Second Life.

7 67. Linden lacks sufficient information to admit or deny the allegations of this
 8 Paragraph, and on that basis denies them.

9 68. Linden admits that search results on the XstreetSL.com website show “Featured
 10 Items” ahead of items that are not featured. Linden lacks sufficient information to admit or deny
 11 the remaining allegations of this Paragraph, and on that basis denies them.

12 69. Linden lacks sufficient information to admit or deny the allegations of this
 13 Paragraph, and on that basis denies them.

14 **IX. FACTS RELATING TO PLAINTIFF GREI**

16 70. Linden lacks sufficient information to admit or deny the allegations of this
 17 Paragraph, and on that basis denies them.

18 71. Linden lacks sufficient information to admit or deny the allegations of this
 19 Paragraph, and on that basis denies them.

20 72. Linden lacks sufficient information to admit or deny the allegations of this
 21 Paragraph, and on that basis denies them.

22 73. Linden lacks sufficient information to admit or deny the allegations of this
 23 Paragraph, and on that basis denies them.

24 74. Linden admits that a work titled “Nomine Araignee Set” is registered with the
 25 United States Copyright Office (the “Copyright Office”) as Registration Number
 26 VAu000958340, and that Copyright Office records for that registration list the “Date of
 27 Creation” as “2005” and the “Type of Work” as “Visual Material.” Linden lacks sufficient
 28

1 information to admit or deny the remaining allegations of this Paragraph, and on that basis denies
 2 them.

3 **X. FACTS RELATED TO COPYRIGHT INFRINGEMENT**

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 5 75. Linden lacks sufficient information to admit or deny the allegations of this
 6 Paragraph, and on that basis denies them.

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 8 76. Linden lacks sufficient information to admit or deny the allegations of this
 Paragraph, and on that basis denies them.

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 10 77. Linden lacks sufficient information to admit or deny the allegations of this
 Paragraph, and on that basis denies them.

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 12 78. Linden lacks sufficient information to admit or deny the allegations of this
 Paragraph, and on that basis denies them.

13
 79. Denied.

14
 15 80. Linden admits that LR controls some of the technology and systems that comprise
 the Second Life platform, that some information related to Residents' activities is stored on LR
 16 servers, that Residents may acquire virtual land within Second Life subject to the Second Life
 17 Terms of Service, and that LR charges service fees. Linden lacks sufficient information to admit
 18 or deny the remaining allegations of this Paragraph, and on that basis denies them.

19
 81. Denied.

20
 82. Denied.

21
 22 83. Linden admits that LR operates Second Life and the XstreetSL.com website, and
 that within Second Life and on XstreetSL.com, Residents may search for and exchange Linden
 23 dollars for digital content that is designed for use with Second Life.

24
 25 84. Linden lacks sufficient information to admit or deny the allegations of this
 Paragraph, and on that basis denies them.

26
 85. Denied.

27
 86. Denied.

87. Linden lacks sufficient information to admit or deny the allegations of this Paragraph, and on that basis denies them.

XI. CLASS ALLEGATIONS

88. This Paragraph contains no allegations to which an answer is required.
89. On information and belief, denied.
90. On information and belief, denied.
91. Linden lacks sufficient information to admit or deny the allegations of this Paragraph, and on that basis denies them.

10 92. On information and belief, denied.

11 93. On information and belief, denied.

12 94. On information and belief, denied.

13 95. On information and belief, denied.

14 96. On information and belief, denied.

15 97. This Paragraph contains no allegations to which an answer is required.

FIRST CAUSE OF ACTION

Trademark Infringement, 15 U.S.C. §1114(1)

(on behalf of Plaintiff Eros and Trademark Infringement Class)

20 98. Linden incorporates by reference the foregoing responses.

21 99. This Paragraph contains no allegations to which an answer is required.

22 100. This Paragraph contains no allegations to which an answer is required.

23 101. Admitted.

24 102. Denied.

25 103. Denied.

26 104. Denied.

27 105. Denied.

1 106. Denied.

2 **SECOND CAUSE OF ACTION**

3 **False Designation of Trademark Origin, 15 U.S.C. §1125**

4 **(on behalf of Plaintiff Eros and Trademark Infringement Class)**

5 107. Linden incorporates by reference the foregoing responses.

6 108. This Paragraph contains no allegations to which an answer is required.

7 109. Denied.

8 110. Denied.

9 111. Denied.

10 112. Denied.

11 113. Denied.

12 114. Denied.

13 **THIRD CAUSE OF ACTION**

14 **Contributory Trademark Infringement, 15 U.S.C. §1114**

15 **(on behalf of Plaintiff Eros and Trademark Infringement Class)**

16 115. Linden incorporates by reference the foregoing responses.

17 116. This Paragraph contains no allegations to which an answer is required.

18 117. Denied.

19 118. Denied.

20 119. Denied.

21 120. Denied.

22 121. Denied.

23 122. Denied.

24 123. Denied.

25 124. Denied.

26 **FOURTH CAUSE OF ACTION**

27 **Vicarious Trademark Infringement, 15 U.S.C. §1114**

(on behalf of Plaintiff Eros and Trademark Infringement Class)

2 125. Linden incorporates by reference the foregoing responses.

3 126. This Paragraph contains no allegations to which an answer is required.

4 127. Denied.

5 128. Denied.

6 129. Denied.

7 130. Denied.

8 131. Denied.

9 132. Denied.

10 133. Denied.

11 134. Denied.

FIFTH CAUSE OF ACTION

Direct Copyright Infringement—Public Display, 17 U.S.C. §501

(on behalf of Plaintiff Grei and Trademark Infringement Class)

15 135. Linden incorporates by reference the foregoing responses.

16 136. Denied.

17 137. Denied.

18 138. Denied.

19 139. Denied.

20 140. Denied.

SIXTH CAUSE OF ACTION

Direct Copyright Infringement--Reproduction, 17 U.S.C. §501

(on behalf of Plaintiff Grei and Trademark Infringement Class)

24 141. Linden incorporates by reference the foregoing responses.

25 142. Denied.

26 143. Denied.

27 144. Denied.

1 145. Denied.

2 146. Denied.

3 **SEVENTH CAUSE OF ACTION**

4 **Contributory Copyright Infringement, 17 U.S.C. §501**

5 **(on behalf of Plaintiff Grei and Trademark Infringement Class)**

6 147. Linden incorporates by reference the foregoing responses.

7 148. This Paragraph contains no allegations to which an answer is required.

8 149. Linden lacks sufficient information to admit or deny the allegations of this
9 Paragraph, and on that basis denies them.

10 150. Denied.

11 151. Denied.

12 152. Denied.

13 153. Denied.

14 154. Denied.

15 155. Denied.

16 **EIGHTH CAUSE OF ACTION**

17 **Vicarious Copyright Infringement, 17 U.S.C. §501**

18 **(on behalf of Plaintiff Grei and Trademark Infringement Class)**

19 156. Linden incorporates by reference the foregoing responses.

20 157. This Paragraph contains no allegations to which an answer is required.

21 158. Linden lacks sufficient information to admit or deny the allegations of this
22 Paragraph, and on that basis denies them.

23 159. Denied.

24 160. Denied.

25 161. Denied.

26 162. Denied.

27 163. Denied.

1 164. Denied.

2 **NINTH CAUSE OF ACTION**

3 **Violation of Cal. Bus. & Prof. Code §17200**

4 **(on behalf of all Plaintiffs and All Classes)**

5 165. Linden incorporates by reference the foregoing responses.

6 166. This Paragraph contains no allegations to which an answer is required.

7 167. Denied.

8 168. Denied.

9 169. Denied.

10 **TENTH CAUSE OF ACTION**

11 **Violation of Cal. Bus. & Prof. Code §17500**

12 **(on behalf of all Plaintiffs and All Classes)**

13 170. Linden incorporates by reference the foregoing responses.

14 171. Denied.

15 172. Denied.

16 173. Denied.

17 **ELEVENTH CAUSE OF ACTION**

18 **Intentional Interference with Economic Relations**

19 **(on behalf of all Plaintiffs and All Classes)**

20 174. Linden incorporates by reference the foregoing responses.

21 175. Denied.

22 176. This Paragraph contains no allegations to which an answer is required.

23 177. Denied.

24 178. Denied.

25 179. Denied.

26 **TWELFTH CAUSE OF ACTION**

27 **Negligent Interference with Economic Relations**

(on behalf of all Plaintiffs and All Classes)

180. Linden incorporates by reference the foregoing responses.

181. Denied.

182. This Paragraph contains no allegations to which an answer is required.

183. Denied.

184. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Digital Millennium Copyright Act)

11 Plaintiffs' copyright claims are barred, in whole or in part, by the provisions of the
12 Digital Millennium Copyright Act, 17 U.S. C. §512 *et. seq.*

SECOND AFFIRMATIVE DEFENSE

(Communications Decency Act)

15 Plaintiffs' state law claims are barred in whole or in part by the provisions of the
16 Communications Decency Act, 47 U.S.C. §230.

THIRD AFFIRMATIVE DEFENSE

(Copyright Preemption)

19 Plaintiffs' non-copyright claims are preempted in whole or in part by the doctrine of
20 copyright preemption.

FOURTH AFFIRMATIVE DEFENSE

(Unenforceable Trademark/Naked Licensing)

23 Plaintiffs' trademarks are unenforceable on the grounds of, inter alia, Plaintiffs' prior
24 pattern of naked licensing.

FIFTH AFFIRMATIVE DEFENSE

(Innocent Publisher)

27 Plaintiffs' trademark claims are barred in whole or in part by the innocent publisher

1 provisions of 15 U.S.C. §1114(2)(B).

2 **SIXTH AFFIRMATIVE DEFENSE**

3 **(Nominative Use)**

4 Plaintiffs' trademark claims are barred in whole or in part pursuant to the doctrine of
5 nominative use.

6 **SEVENTH AFFIRMATIVE DEFENSE**

7 **(Estoppel)**

8 By virtue of their own conduct and statements, Plaintiffs are stopped from recovering for
9 the claims alleged in Plaintiffs' Complaint.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 **(Waiver)**

12 Plaintiffs have waived any right to recovery from Defendants.

13 **NINTH AFFIRMATIVE DEFENSE**

14 **(Unclean Hands)**

15 Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

16 **TENTH AFFIRMATIVE DEFENSE**

17 **(Failure to Mitigate)**

18 Plaintiffs' claims are barred to the extent they have failed to mitigate damages.

19 **ELEVENTH AFFIRMATIVE DEFENSE**

20 **(Contributory Negligence)**

21 Plaintiffs' alleged damages were caused, in whole or in part, by Plaintiffs' own
22 negligence.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 **(Assumption of Risk)**

25 Plaintiffs assumed the risk of the harms alleged in their Complaint.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 **(License)**

1 Plaintiffs' claims are barred, in whole or in part, due to Plaintiffs having expressly or
2 impliedly licensed the complained of conduct.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 **(Acquiescence/Abandonment)**

5 Plaintiffs' trademark claims are barred, in whole or in part, due to Plaintiffs'
6 acquiescence in the alleged infringing conduct and abandonment of the asserted rights.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 **(Laches)**

9 Plaintiffs' claims are barred in whole or in part by the doctrine of laches.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 **(Statute of Limitations)**

12 Plaintiffs' claims are barred in whole or in part by the applicable statutes of limitations,
13 including 17 U.S.C. 507, Cal. Code Civ. Proc. 338(d) and/or other similar, related, or analogous
14 statutes.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Defendants pray for the following relief:

- 17 A. That judgment be entered against Plaintiffs and in favor of Defendants on all causes
18 of action,
- 19 B. That Plaintiffs take nothing by their Complaint,
- 20 C. That Linden be awarded its attorney's fees and costs, and
- 21 D. For such other and further relief as equity and justice may require.

22 Dated: October 30, 2009

23 DURIE TANGRI LLP

24

25 By: /s/

26 Michael H. Page
27 Attorneys for Defendants
28 LINDEN RESEARCH, INC. and
LINDEN RESEARCH INTERNATIONAL, INC.